

page 1

United States District Court
For the Judicial District of Puerto Rico

United States of America
Plaintiff

v.

Received off
Oct 21, 2005
10:40 AM
Lorraine F. Lopez
Court Clerk

Crim. C. No. 00-108 (FZS)

Fernando Gomez-Pasaris
Defendant

Request for (40 Days) continuance of sentencing hearing

Comes now the Defendant, Fernando Gomez-Pasaris, ("Gomez and/or Defendant") by and through this motion and very respectfully, moves this Honorable Court for a continuance of (40 days) in Petitioner's Sentencing's hearing, in order to in order to provide Defendant with constitutional due process of law at his sentencing hearing and

in support hereof Defendant states the following:

Relevant Background

On August 12-2005, the Court of Appeals for the First Circuit, Ruled on Gomez's Appeal,

Affirming Gomez's conviction and Reversing

Gomez's Sentence based upon Supreme's

Court's Ruling in Booker and Taylor, which

made United States Sentencing guideline, ("U.S.S.G.")

"U.S.S.G.") advisory. The First circuit did

not rule on the merits of any of the attack which

Gomez made to the computation of his base

Offense level which determined Gomez's

Final Sentence.

it is the law of this circuit and of the supreme court

that in order for Gomez to present issue again

for appeal after the Remand, defendant has to Renew

his objection together with memorandum of law

and evidence supporting his arguments, and

that district court preventing Gomez from doing

So, would be a gross violation of Gomez's

Due Process Constitutional Rights, As provide,

the United State Constitution

Gomez ~~also~~ should be allowed to Renew

~~the following~~ and present the followings

objection to the computation of his sentence,

as well, to obtain from his property memo-

nandum of law, and submit them within

page 4

this court backing-up his argument, be
permitted to request downward departure
and to present evidence and call witness
on his defense:

objection to be presented on Remained

I. Gomez's testimony at the second trial did
constituted perjury, therefore the two (2) levels
enhancement to Gomez's base offense level ("
B.O.L.") were wrongfully applied. Gomez
should be permitted to a memorandum of law
which he have all ready prepared in property
to support this argument and to subpoena
witness that will corroborate Gomez's statements
the name of that witness is in Gomez's property

II. That weapon allegedly found in the minivan, in which, Gomez arrived to the Hotel Iberia the day of his arrest, was not in Gomez's possession, therefore a two levels enhancement for the possession of that Gun was wrongfully applied. Gomez should be permitted to obtain from his property, a memorandum of law and submit with in the court to support it claims.

III. District court should have granted for (4) level downward departure as to minor participant, based, upon Government allegation that Gomez went to the Hotel to pick up drugs ("mula") Gomez having digested both trial's

and collected the Government's Allegations support this claims, as well a memorandum of law have been drafted by Gomez, taking into account the basis for used by District to deny Gomez's Request back 11-04-2005.

however, Gomez tried to upoint this from his property.

IV. Doctrine of collateral stopped bars

District Court from making additional determination to enhance Gomez's "BOA".

by increasing the drug amount, which was charged in the indictment and the jury

Rejected it; two contradicting Judgment based upon the same evidence clearly violates

the doctrine of ~~the~~ collateral stopple doctrine

V. Due to the fact that Indictment against Gomez did not named any co-conspirator, in order for the court to make finding that Gomez could be held Responsible for drugs possessed by any other, it would Requires the court to name- a co-conspirator which the grand jury did not, there, thereby depriving Gomez of the protection afforded by the grand-jury clause of the fifth Amendment and Sixth. of the united States constitution.

Gomez would be permitted to submit a memorandum of law, which he have already prepared in his property, in support hereof.

IV. Gomez-fast track application

Gomez will waive the Right to fight
at the immigration court thereby saving
taxes payer money and court time and Docket
Jams, in exchange of downward departure
~~Please~~ that Gomez should be permitted to
submit a memorandum of law in support
of this argument, which is already prepared
Gomez's property

- Gomez's immigration statute as a
deportable alien place him in a harsher case
circumstance of an american citizen as example
of that is the fact that Gomez's label as "a
"deportable alien" excluded him from ^(a) Dugis program

and it benefits of a year of sentence reduction
including halfway house; (b) comm
community service; (c) comp minimum
Security; (d) and the latest fact development
of the contract ~~with~~ signed between
the Federal Bureau of prison and correctional
Corporation of America where defendant
has been ~~sentence~~ send due to his labor
as "disposable alien"

In San Juan Puerto Rico 10-21-05

